

see also

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRENCE MONTAGUE,	:	CIVIL NO. 1:CV-00-0895
Plaintiff		:
v.	:	(Magistrate Judge Smyser)
ROBERT W. MEYERS,	:	
ROBERT S. BITNER,	:	
DAVID J. WAKEFIELD,	:	
TERRY L. WHITMAN,	:	
JACK ALLAR,	:	
LARRY LIDGETT,	:	
LT. DECKER,	:	
MAJOR YANCY and	:	
JEFFREY A. RACKOVAN,	:	
Defendants		

**FILED**  
**HARRISBURG, PA**

AUG 08 2001

MARY E. D'ANDREA, CLERK  
PER *[Signature]* DEPUTY CLERK

**ORDER**

The plaintiff, a prisoner proceeding *pro se*, commenced this 42 U.S.C. § 1983 action by filing a complaint on May 18, 2000. On July 6, 2000, the plaintiff filed a supplemental complaint. The plaintiff claims that the defendants required him to share a cell with inmates who smoke and that the smoke aggravates his asthma.

The parties consented to proceed before a magistrate judge, and on July 14, 2000, this case was reassigned to the undersigned magistrate judge.

On July 31, 2000, the defendants filed an answer to the complaint and supplemental complaint.

By an Order dated February 23, 2001, we granted the plaintiff's motion for leave to supplement his complaint, and the plaintiff was granted twenty days to file a supplemental complaint alleging that his transfer to SCI-Waymart was in retaliation for the filing of the instant action.

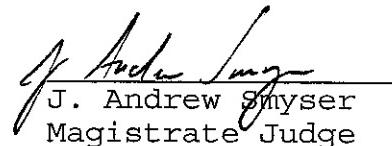
On March 1, 2001, the plaintiff filed a supplemental complaint which alleged that his transfer to SCI-Waymart was in retaliation of the filing of the instant action. On March 12, 2001, the defendants filed an answer to the supplemental complaint.

On June 27, 2001, the defendants filed a motion for summary judgment. After requesting and receiving an extension of time, on July 10, 2001 the defendants filed a statement of material facts, a brief and documents in support of their

motion for summary judgment. The plaintiff has not filed a brief in opposition to the motion to dismiss as required by Local Rule 7.6, Rules of Court, M.D. Pa.

Generally, a dispositive motion may not be granted merely because it is unopposed. However, when a plaintiff fails to prosecute an action or fails to comply with a court order, the court may dismiss the action pursuant to Fed.R.Civ.P. 41(b) of the Federal Rules of Civil Procedure.

AND NOW, this *8<sup>th</sup>* day of August, 2001, IT IS HEREBY ORDERED that the plaintiff shall file a brief in opposition to the motion for summary judgment, a response to the defendant's statement of material facts and any summary judgment evidence in opposition to the motion on or before August 22, 2001. If the plaintiff fails to file a brief in opposition within this time we will consider dismissing this action pursuant to Fed.R.Civ.P. 41(b), by application of the factors in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

  
J. Andrew Smyser  
Magistrate Judge

Dated: *August 8, 2001.*

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

August 8, 2001

Re: 1:00-cv-00895 Montague v. Meyers

True and correct copies of the attached were mailed by the clerk to the following:

Terrance Montague  
SCI-R  
SCI at Rockview  
BZ-2761  
P.O. Box A  
Bellefonte, PA 16823

Gregory R. Neuhauser, Esq.  
Office of Attorney General  
Strawberry Square  
15th Floor  
Harrisburg, Pa 17120

cc:			
Judge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Pro Se Law Clerk
Magistrate Judge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	INS
U.S. Marshal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jury Clerk
Probation	<input type="checkbox"/>	<input type="checkbox"/>	
U.S. Attorney	<input type="checkbox"/>	<input type="checkbox"/>	
Atty. for Deft.	<input type="checkbox"/>	<input type="checkbox"/>	
Defendant	<input type="checkbox"/>	<input type="checkbox"/>	
Warden	<input type="checkbox"/>	<input type="checkbox"/>	
Bureau of Prisons	<input type="checkbox"/>	<input type="checkbox"/>	
Ct Reporter	<input type="checkbox"/>	<input type="checkbox"/>	
Ctroom Deputy	<input type="checkbox"/>	<input type="checkbox"/>	
Orig-Security	<input type="checkbox"/>	<input type="checkbox"/>	
Federal Public Defender	<input type="checkbox"/>	<input type="checkbox"/>	
Summons Issued	<input type="checkbox"/>	with N/C attached to complt. and served by: U.S. Marshal <input type="checkbox"/> Pltf's Attorney <input type="checkbox"/>	
Standard Order 93-5	<input type="checkbox"/>		
Order to Show Cause	<input type="checkbox"/>	with Petition attached & mailed certified mail to: US Atty Gen <input type="checkbox"/> PA Atty Gen <input type="checkbox"/> DA of County <input type="checkbox"/> Respondents <input type="checkbox"/>	
Bankruptcy Court	<input type="checkbox"/>		
Other _____	<input type="checkbox"/>		

MARY E. D'ANDREA, Clerk

DATE: 8-8-01

BY:   
Deputy Clerk